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NATIONAL INDIAN GAMING COMMISSION

3

CLASS II CLASSIFICATION STANDARDS

4

GOVERNMENT-TO-GOVERNMENT CONSULTATION MEETING

5

WITH THE MUSCOGEE-CREEK NATION

6

7

HELD IN OKLAHOMA CITY, OKLAHOMA

8

ON AUGUST 9, 2006

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REPORTED BY: TRENA K. BLOYE, CSR

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ON BEHALF OF THE MUSCOGEE-CREEK NATION:

A. Ellis, Chief	Owen Sapulpa
Sam Alexander	Jason Giles
David McCullough	Geoffrey Standing Bear
Bill Settle	Sam Alexander
Jason Nichols	
Roger Wiley	
George Tiger	
Roger Barnett	
June Mustari	

COMMISSIONER CHONEY: Welcome to

2       this consultation meeting. The subject matter  
3       will be the Class II regulations. For your  
4       information, we're recording this for public  
5       record. It will be made a public record upon  
6       the course of this proceeding. And if you  
7       would like to get a copy of the transcript  
8       hereafter it will be up on our website,  
9       probably within a matter of a very few short  
10      days. And also, if during the course of the  
11      proceedings you want to talk about anything  
12      other than the Class II standards, want to  
13      talk about any other tribal gaming matters,  
14      please let us know, because we will have to go  
15      off the public record.

16               Also for the record, I would like  
17      introduce Phil Hogen. He is chairman of the  
18      National Indian Gaming Commission. I am Chuck  
19      Choney with the NIGC. And introduce Penny  
20      Coleman, she's our acting general counsel.  
21      And Michael Gross, he's a senior attorney with  
22      the Office of General Counsel.

23               Tim Harper, he's our region  
24      director. Sitting in the back there is Marci  
25      Pate Ober. She's a senior investigator for

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1       this region. And John Hay, he's is senior  
2       attorney with the Office of General Counsel.

3                   And also for the record, if you  
4                   could introduce yourselves.

5                   MR. ALEXANDER: I'm Sam Alexander.  
6                   I'm a tribal council member for the  
7                   Muscogee-Creek Nation.

8                   MR. McCULLOUGH: I'm David  
9                   McCullough. I'm the attorney for the tribe's  
10                  gaming operation authority board, which is the  
11                  management arm of the gaming facility.

12                  MR. SETTLE: I'm Bill Settle. And  
13                  I'm on the gaming board.

14                  MR. NICHOLS: Jason Nichols,  
15                  acting gaming commissioner for Muscogee  
16                  Nation.

17                  MR. WILEY: I am Roger Wiley,  
18                  attorney general.

19                  CHIEF ELLIS: Principal Chief  
20                  Ellis.

21                  MR. TIGER: Speaker George Tiger  
22                  of the National Council.

23                  MR. BARNETT: Second Speaker Roger  
24                  Barnett for National Council.

25                  MR. STANDING BEAR: Geoffrey

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1                  Standing Bear, attorney for the National  
2                  Council.

3                  MR. SAPULPA: Owen Sapulpa, on the  
4                  Gaming Operations Authority Board.

5 MR. PLATT: Mike Platt, chief of  
6 staff.

7 MS. MUSTARI: June Mustari,  
8 chairman of the gaming board.

9 MR. BEAVER: Brent Beaver, member  
10 of the gaming board.

11 MR. GILES: Jason Giles, National  
12 Gaming Industries.

13 COMMISSIONER CHONEY: Okay. Thank  
14 you for coming this way and meeting with us.  
15 Chairman Hogen.

16 CHAIRMAN HOGEN: Okay. I will add  
17 my thanks to your joining us here for this  
18 government-to-government consultation. We are  
19 winding down here on two full days of visiting  
20 with the tribes, mostly Oklahoma tribes about  
21 these proposals. We published in the "Federal  
22 Register" on the 25th of May a set of proposed  
23 regulations and a definitional of change that  
24 we have under consideration.

25 We are also going to publish in

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1 the "Federal Register" this Friday a set of  
2 proposed technical standards. This would be a  
3 package, classification standards and  
4 technical standards. And we have been in  
5 Oklahoma a number of times talking about this

6       proposal. And we are hopefully approaching  
7       the point where we will either go forward or  
8       decide on another approach.

9               After we get those technical  
10       regulations published there will be a comment  
11       period ending on September 30th with respect  
12       to those regulations. And they are also  
13       extending the comment period that had been  
14       scheduled to conclude on the 23rd of this  
15       month. That will be extended also to  
16       September 30th. On the 19th of September we  
17       are going to have a public hearing on the  
18       proposals in Washington, DC. We will have a  
19       number of panels of presenters to address  
20       various aspects of this complex subject.

21              We will be hearing from tribal  
22       leadership. We will be hearing from the state  
23       representatives with respect to their points  
24       of view. We will hear some information about  
25       possible economic impact of various

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1       implementations that we have under  
2       consideration. We will also be hearing from  
3       some of the manufacturers and designers of  
4       gaming equipment with respect to how this  
5       might apply to them and that activity.

6              At the end of that process, after  
7       the 30th of September we will look carefully

8 at the comments that have been sent to us, we  
9 will recall what's been said in these and  
10 other consultations and decide are we going to  
11 go forward with this regulatory effort or not.  
12 And if so, how we might change the proposal if  
13 we do.

14 So, it's in that spirit and with  
15 that end that we meet here with you today.  
16 And we very much would like to hear your  
17 comments. We know how dependent Oklahoma  
18 tribes have been on Class II gaming and what a  
19 viable part it still plays with tribes such as  
20 yours.

21 CHIEF ELLIS: Thank you, sir. You  
22 say you are going to determine whether you  
23 move forward or not. What's going to decide  
24 that?

25 CHAIRMAN HOGEN: Well, we feel  
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1 that there is a real great need for clarity in  
2 this area. And if we do clarify it, we want  
3 to do it right. We want to create fewer  
4 problems, you know. We want to solve more  
5 problems than we create. And so we will weigh  
6 all of these concerns that will have been  
7 mentioned to us and decide is it still  
8 appropriate, necessary, and in the best

9 interest of future Indian gaming to do this.

10 CHIEF ELLIS: You probably can't  
11 tell us how things are going, can you?

12 CHAIRMAN HOGEN: Well, I can tell  
13 you there are a lot of concerns, some of which  
14 we hadn't thought of before we got here.  
15 That's all useful to us. I still, right now,  
16 think that it will be useful to have a clear  
17 definition with respect to the difference  
18 between Class II and Class III. I haven't  
19 decided exactly what that difference ought to  
20 be or what the regulations ought to say.

21 CHIEF ELLIS: There's many things  
22 that our nation disagree with or how many  
23 others have agreed on it. But I would like to  
24 refer to Mr. McCullough, if you have --

25 MR. McCULLOUGH: Actually, our

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1 board has met and discussed this. I would  
2 like to start out, maybe, and I will be happy  
3 to carry on, but I would like to start out  
4 with Mr. Settle here who is a member of our  
5 board and who is an attorney, and who is new  
6 to the gaming -- is basically new to the  
7 gaming area. And he had several comments that  
8 I think were worth getting out on the table  
9 and maybe start some discussion on that. Go  
10 ahead.



11                   MR. SETTLE: Thank you very much,  
12       Members of the Board. As he said, I'm a  
13       lawyer and I have come on board as recently as  
14       May. And after -- and before coming on the  
15       board, but after specifically coming on the  
16       board I have delved more deeply into the  
17       various cases that have been cited regarding  
18       Class II gaming and tried to learn as much as  
19       I could about Class II gaming, and also have  
20       studied the rules that have been proposed and  
21       the existing laws.

22                   And there were a couple of things  
23       that really kind of jumped out at me. And I  
24       want to mention those at this time. And I  
25       know some of the other members of the Board

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1       may have other remarks.

2                   The first thing I think that  
3       really caught my attention is it appears to me  
4       that much of what the board is considering in  
5       the rules, and particularly with regard to  
6       this word "clarity" word, is something that's  
7       already been litigated and brought up by the  
8       Department of Justice and clarified by the  
9       courts. And, therefore, I'm a little bit  
10      confused as to why the Board feels or  
11      Department of Justice feels there needs to be

12 clarity.

13                   This has been litigated, and the  
14 Department of Justice has tried to present  
15 these viewpoints and they lost. And now all  
16 of a sudden -- I won't say all of a sudden --  
17 we are looking at a proposed change of the  
18 rules to make it more compatible with what the  
19 Department of Justice has argued all together  
20 in these previous cases.

21                   And so that, to me as a lawyer,  
22 when I look at these things, I try to look at  
23 cases and look at both sides and try to figure  
24 out who are the winners and who are the  
25 losers. Well, the tribes have been the

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1 winners and the Department of Justice has been  
2 the losers. I have been an assistant U.S.  
3 attorney an U.S. attorney, and I understand  
4 how a lot of those things work.

5                   This, to me, appears to be an  
6 attempt at an end run around the law that's  
7 been decided by the courts. And so, the  
8 question of clarity, to me, is an ambiguous  
9 one, because it has been clarified through the  
10 court cases.

11                   And one of the other things I  
12 noticed in the rules was the word "assumed."  
13 In the rules it said the board has assumed

14       that congress intended these changes. Well,  
15       again, that assumption, the intent of congress  
16       has already been previously litigated. And  
17       the courts have found in favor of the tribes  
18       and, therefore, in my opinion, rejected the  
19       argument there was assumption that congress  
20       intended more than what was in the law. And  
21       so those are really a couple of points that  
22       jump up to me as I look through all of this  
23       and for which I do not find clarity, I guess,  
24       to use the same word.

25                     And so I wonder about that, is why

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1       do we -- why do we attack settled law? Why do  
2       we do it through rules? And why are we  
3       operating -- and I say "we," I guess it's the  
4       board. Why are you operating on the  
5       assumption that this is what congress intended  
6       after these questions have already been  
7       answered in the federal courts. So a couple  
8       of things that came to my mind.

9                     And as I said, I'm new to the  
10       board, trying to learn, become better  
11       acquainted with all the issues. And I will  
12       continue to do that also. But I'm sure there  
13       are many things about the tribal gaming laws  
14       that I am not very familiar with, and

15        hopefully will become more so in the future.

16                    CHAIRMAN HOGEN:   Well, let me  
17        share a couple of those with you.   The cases  
18        that you refer to, many of them dealt with the  
19        Mega Mania game.   That's birthplace was here  
20        in Oklahoma, and I expect Creeks know as much  
21        about Mega Mania as anybody.   The Mega Mania  
22        was kind of a clunky electronic terminal that  
23        you could play bingo on.   It didn't have  
24        electronic cards, but it had bingo cards.   You  
25        couldn't play until twelve people were ready

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1        to play in the game, and it took about a  
2        minute to play that game.

3                    And the Justice Department, that  
4        you referred to, came along and said, "Wait a  
5        minute.   Johnson Act says you can't use  
6        gambling devices in Indian country unless you  
7        have got a compact.   And in the Indian Gaming  
8        Regulatory Act, you don't have a compact.   You  
9        are using gambling devices.   That's a  
10       violation."

11                   The tribe said, "No, this is not a  
12        gambling device.   This is an aid, technologic  
13        aid to the play of bingo."   And the court  
14        agreed with them.   They said this isn't a  
15        gambling device.   It's just an aid to aid the  
16        twelve or more players to play.   Without them

17       you haven't got a game. The game is outside  
18       the equipment.

19                       And so that was a step here in  
20       settling the law. Now, what the Court said in  
21       one of these cases is, "Our decision rests on  
22       our determination that the Mega Mania game is  
23       a bingo or a game similar to bingo and the  
24       Mega Mania machines meet the statutory  
25       definition of an aid to bingo. Our holding in

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1       in case is therefore limited to the Mega Mania  
2       form of bingo currently at issue."

3                       Well, that's a problem that we  
4       have. We get one request after another  
5       saying, "Please approve this variation of  
6       electronic bingo so we can play it without a  
7       compact." And it gets more and more  
8       complicated. We think the much better way to  
9       deal with this is to have a set of rules based  
10      on this Indian Gaming Regulatory Act, its  
11      legislative history, and the case law that's  
12      developed.

13                      The cases dealing with the Mega  
14      Mania machine also said, "While complete  
15      self-contained electronic or mechanical  
16      facsimiles of a game of chance, including  
17      bingo, may indeed be forbidden by the Johnson

18 Act after the enactment of IGRA. We hold that  
19 mere technologic aids to bingo such as Mega  
20 Mania terminals are not."

21 Well, they said, and I agree with  
22 them, that if it's an electronic facsimile of  
23 a game of chance, it falls into that Class III  
24 category. I think that's why we need to  
25 clarify it with our proposed definitional

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1 change.

2 The games that could be played  
3 under these proposed regulations wouldn't take  
4 a minute to play. You wouldn't have to have  
5 twelve people to play. You could play with as  
6 few as two people, and you could play in as  
7 short a time as ten seconds. We think that's  
8 allowing a great deal of flexibility and  
9 getting pretty close to the line before you  
10 cross over to an electronic facsimile.

11 But it's after grappling with all  
12 of those questions and figuring out every time  
13 we come up with something, technology will  
14 come along and present a new challenge. But  
15 we think we need a set of rules to help us  
16 find a way.

17 MR. SETTLE: Has not the  
18 Department of Justice raised those issues in  
19 the five major cases and the Courts found

20 against them with regard to the machines in  
21 question? Of course, the machines changed.

22 CHAIRMAN HOGEN: Well, there were  
23 two machines that were addressed by these  
24 courts. One of them was this Mega Mania  
25 terminal. The other was a pull-tab dispenser

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1 that dispensed paper pull-tabs.

2 And the Court said, "This is just  
3 bells and whistles. That's not the game  
4 itself. The game is in the paper." The  
5 Justice Department said that's a gambling  
6 device and the courts disagreed with them.  
7 We're trying to build on those things as we  
8 write these rules.

9 But you're right, there are more  
10 and more machines, only two of which are  
11 addressed by the courts. They are so far  
12 removed from those games that were in these  
13 cases that it's time we have a clear  
14 definition.

15 MR. SETTLE: Again, did not the  
16 Department of Justice argue those same points?

17 CHAIRMAN HOGEN: Yeah. I could  
18 sure go over this again if you would like me  
19 to.

20 MR. SETTLE: Well, you don't need

21 to repeat it. I have read the cases. But my  
22 reading is those were some of the points they  
23 raised and litigated, and the courts side  
24 decided against them. And so, anyway, that's  
25 just my reading and how I felt about it.

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1 The same thing had to do with  
2 the -- I probably wouldn't have said anything  
3 about it except in the regs it said that the  
4 proposed changes are what you have assumed  
5 congress intended. And what congress  
6 intended, that question has also been  
7 litigated. And so to me it seems like you're,  
8 as I said, making an end run around the  
9 established law through the federal rule  
10 making.

11 CHAIRMAN HOGEN: Well, we -- I've  
12 been a U.S. attorney myself. I don't think  
13 this is an end run. I think this is a sincere  
14 effort to do as the Indian Gaming Regulatory  
15 Act directed the National Indian Gaming  
16 Commission to do to promulgate some federal  
17 standards. If there was ever a federal  
18 standard needed, I think it's to clarify this  
19 cloudy, uncertain area as what separates  
20 uncompact Class II gaming from compacted  
21 Class III.

22 MR. SETTLE: Well, I appreciate



23 the chance the Chief gave me to be here today.  
24 I appreciate being able to talk to the board.  
25 Obviously, we have a disagreement in our

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1 interpretations. But I appreciate the Board  
2 hearing me.

3 CHAIRMAN HOGEN: And we appreciate  
4 you comments. We sincerely do.

5 MR. McCULLOUGH: Just as a  
6 followup. Maybe something I think I heard you  
7 touch on, was you said these rules are about  
8 as close as we can get, which tells me there's  
9 more -- it seems to imply there is more  
10 leeway. Do we get closer? The two players,  
11 the ten seconds. I think you said these are  
12 about as close as we can get. Where is the  
13 line? As technology goes, where is the line?  
14 The line keeps -- it seems like if it's ten  
15 seconds, eight seconds, four seconds. Is that  
16 a function of technology or is that a function  
17 of law?

18 CHAIRMAN HOGEN: Well, I think it  
19 might be a function of human nature. You've  
20 got to have player participation. And you've  
21 got to have enough time, enough time in those  
22 intervals for players to participate. When  
23 you get to the point where the machine is so

24 fast you can't participate, I think you've  
25 crossed it.

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1 MR. McCULLOUGH: But that point is  
2 still -- we're somewhere close to it.

3 CHAIRMAN HOGEN: What I'm saying  
4 is we probably could have said, "Give those  
5 players two minutes to do their cards," but  
6 that probably would have been too much. Now,  
7 if we say less than two seconds, we may have  
8 eliminated that opportunity.

9 MR. McCULLOUGH: Did you have  
10 anything? I want to defer around to others  
11 that may have statements or questions, make  
12 sure.

13 Jason? Jason is the, I guess,  
14 acting chairman of the Office of Public  
15 Gaming, which is the regulatory body of the  
16 tribe, which, as he's put forth and as we have  
17 discussed before, these regs certainly appear  
18 to basically remove the regulatory function  
19 from the tribe and place it with the NIGC. I  
20 think Jason had some concern or statement he  
21 wanted to make on that.

22 MR. GILES: I just wanted to read  
23 something real quick:

24 "The NIGC proposed regulations  
25 exclude tribal governments from participation

1 in classification of games and allowing  
 2 independent game testing laboratories that are  
 3 subject to NIGC oversight to make legal  
 4 determinations regarding the classifications  
 5 of games. Tribal governments would be  
 6 prohibited from creating their own testing  
 7 laboratories, nor could the tribal regulators  
 8 approve the placing of games on the floor  
 9 without the approval of an NIGC-controlled  
 10 lab.

11 "Each of these proposed  
 12 regulations invade tribal sovereignty and the  
 13 inherent right of tribal governments to  
 14 exercise authority over internal tribal  
 15 affairs. These proposed regulations grant the  
 16 NIGC authority that simply does not exist  
 17 under the federal law."

18 So, in essence, it basically takes  
 19 away the role of the gaming commission or the  
 20 tribal gaming commission, is my opinion.

21 MR. McCULLOUGH: What function do  
 22 you see with the tribal gaming commission if  
 23 these regs were enacted?

24 CHAIRMAN HOGEN: Well, what we had  
 25 in the absence of these was individual tribes

1       deciding where the line was. And in Oklahoma,  
2       more so than anyplace else, there were some of  
3       those decisions that were wrong. The tribes  
4       were conducting Class III gaming that their  
5       tribal gaming commissions didn't say was  
6       impermissible without a compact. As a result  
7       of that NIGC issued closure orders, imposed  
8       fines of millions of dollars on tribes, and  
9       the economic development envisioned under IGRA  
10      came to a screeching halt.

11                 And the folks that suffered were  
12      not just the guys that called the shots there,  
13      but the folks who needed the scholarships and  
14      the dialysis machines and so forth. That's  
15      what we're striving to do.

16                 We're striving to avoid the  
17      situation where either tribal gaming  
18      facilities get closed because they are doing  
19      uncompacted Class III gaming or they are  
20      assessed significant fines, or worse yet, the  
21      Justice Department comes in and criminally  
22      prosecutes tribes for using gambling devices  
23      in Indian country in the absence of those  
24      compacts.

25                 So, you know, we're trying to

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1       allow fun, fast, profitable game as Class II,

2 but not be so far that it crosses that line.  
3 Does it take from tribal sovereignty? Yes, it  
4 does. The whole Indian Gaming Regulatory Act,  
5 as Monty Deer used to say, stepped right in  
6 the middle of sovereignty. I'm not happy with  
7 that. I'm not pleased with that. But that's  
8 the law they hired me to help enforcement, so  
9 we're trying to do it in a graceful way that  
10 will permit a healthy Class II segment of the  
11 gaming industry.

12 But if we lose the integrity that  
13 the whole system has, that is you have got a  
14 defensible difference between Class II and  
15 Class III, I fear for the whole future of it,  
16 whether it be congress that revises it or  
17 states that come along and say, you know,  
18 "They aren't playing by the rules anymore.  
19 Let's let everybody do any kind of gaming."

20 MR. McCULLOUGH: Our board has a  
21 couple of other things. But I want to yield  
22 to the political branch of the tribe if  
23 there's -- Mr. Speaker?

24 MR. TIGER: Okay. I really have  
25 prepared text. I want to quickly go through

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1 it. I will leave it for the record purposes.  
2 I know you are doing that. Chuck and Penny,

3 Tim, those of you have seen --

4 COMMISSIONER CHONEY: Do you have  
5 a copy of it?

6 MR. TIGER: Yes, I do.

7 First of all, I am here today on  
8 behalf of the National Council of Muscogee  
9 Creek Nation as its elected speaker.

10 As you know, the Nation has been  
11 operating Class II gaming since 1984. And  
12 although we have had to oppose the State of  
13 Oklahoma in three years of court battles, in  
14 each case we have prevailed. We do not easily  
15 discuss with anyone giving up our rights to  
16 determine our own territory and have not been  
17 approved by the National Council are  
18 immediately suspect and we intend to question  
19 any person, company, or government which tells  
20 us it has authority over our people and our  
21 visitors.

22 Since the days when we brought our  
23 case to the federal courts we worked with the  
24 state and federal governments to develop sound  
25 policies and practices on gaming related

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1 issues. Throughout this process we set a line  
2 of demarcation issues -- throughout this  
3 process we set a line of demarcation. That  
4 is, a limit. We stand behind that line to

5 maintain and protect our sovereign  
6 governmental authority within our own  
7 territory.

8 The National Council of the  
9 Muscogee Creek Nation considers the proposed  
10 regulations which are the subject of today's  
11 consultation as unsound and we urge the NIGC  
12 to withdraw them without delay.

13 These proposed regulations cause  
14 harm to the native nations by replacing our  
15 sovereign authority to make our own  
16 determinations on Class II gaming with the  
17 authority of the National Indian Gaming  
18 Commission.

19 We believe the NIGC should avoid  
20 policy making and defer to the congress the  
21 definition of what constitutes Class II  
22 gaming. We also believe the NIGC should stop  
23 asserting no one could have foreseen the  
24 changes in Class II gaming made over the years  
25 by the use of technology and instead plowed

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1 our efforts to use the latest technology.

2 We should, as a people, enjoy the  
3 benefits of technology rather than be punished  
4 for it. We are concerned with federal  
5 government agency to turn back the technology

6 clock on people. We say this with history in  
7 mind, knowing that once the federal government  
8 dismantled our governments, businesses, land  
9 holdings, school systems, and lay upon us a  
10 terrible burden which costs the lives of  
11 thousands of our people. It always begins  
12 with talk, then policy, then it moves to  
13 action. Small incursions into our rights of  
14 peaceful coexistence with the states and the  
15 federal government seem to have a way of  
16 becoming larger, and history has shown,  
17 forceful when we resist.

18 Our position is that the NIGC  
19 should strive to minimize federal government  
20 control over our local governments and their  
21 activities. We note the historical facts of  
22 Indian gaming in Oklahoma, which showed that  
23 prior to IGRA's enactment in 1988, the Indian  
24 tribes were implementing technological changes  
25 to the game of bingo and were studying as we

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1 do now, any advancement in technology that  
2 would increase game play of the games of bingo  
3 and pull-tabs.

4 And you have already, Chairman  
5 Hogen, mentioned Mega Bingo. And as you have  
6 stated, broadcast from Creek Nation Tulsa  
7 Bingo using satellite technology, linking



8 simultaneously with more than 40 Indian bingo  
9 halls throughout the United States in one game  
10 with a large player pool. This game as still  
11 bingo.

12 We remember a sit-down electronic  
13 bingo card displays, the hand-held bingo card  
14 holders, the use of random number generators  
15 to assist ball call and other endless uses of  
16 technology of the game of bingo.

17 As we advance the NIGC and  
18 Department of Justice at times discussed their  
19 displeasure to us about our ever growing  
20 industry. Of course, we wonder what other  
21 competing interests were influencing the NIGC  
22 and the United States Department of Justice,  
23 just as we do now.

24 And when we were forced to defend  
25 ourselves in federal courts we were found by

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1 law, as Mr. Settle has eluded to, to be proper  
2 and legal, although the executive branch has  
3 tried to argue otherwise.

4 We are free of organized crime  
5 influence. We make an industry grow, employee  
6 many people, and provide much needed revenue  
7 into our Nation. We applaud all the tribes  
8 and those who work with them, and we thank

9 vendors who work with us to find the best of  
10 technology. We are asking you to answer a  
11 question. What kind of a government restricts  
12 a people from using technological advances.

13 We believe that the Indian Gaming  
14 Regulatory Act now provides that Indian tribes  
15 are the primary regulators of Class II gaming,  
16 that the states have no Class II regulatory  
17 role and the NIGC should not try to redefine  
18 the definition of Class II gaming. We ask the  
19 NIGC to not try to regulate around these court  
20 decisions favorably to the Indian tribes.

21 When the executive branch of the  
22 United States government has tried to  
23 discourage the Indian tribes use of ever  
24 changing technology, such as federal cases as  
25 United States vs. 162 Mega Mania Devices,

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1 United States vs. 103 Electronic Gaming  
2 Devices; Diamond Gaming Enterprises, Inc., vs.  
3 Reno, as well as others, reaffirmed our use of  
4 technology.

5 Why does the United States seem to  
6 still fear us? We have sent our brave young  
7 men and women into battle for this great  
8 country and I have nothing but respect and  
9 admiration of the Constitution of the United  
10 States of America.

11                   However, those of us that are  
12           elected as officials of the Muscogee-Creek  
13           Nation, we too take a note to uphold our  
14           Constitution and to form a government that is  
15           much older than the United States of America.

16                   We promote mutual assistance  
17           between the local Oklahoma governments and our  
18           programs, such as road and bridge  
19           construction, fire protection, education,  
20           elderly care, family growth, and employment  
21           opportunities. We do this not because of any  
22           federal regulation, but because it is our  
23           custom and it is the right thing to do.

24                   These proposed regulations will  
25           set all of us back in time and reduce our

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1           options. We have a Class III straight tribal  
2           compact. And we have granted this state,  
3           State of Oklahoma, shared authority over those  
4           games, as well as money from our own  
5           activities in our own territory. We regulate  
6           Class II gaming ourselves with oversight from  
7           you, the National Indian Gaming Commission.

8                   Before I came here I looked up the  
9           "oversight" in the Merriam-Webster dictionary  
10          and have no problem with that definition,  
11          which is "Watchful and responsible care." I

12       also looked up the word "authority", which  
13       says it is, "The power to influence or command  
14       thought, opinion, or behavior."

15               We accept your oversight. We can  
16       not, however, accept your command over our  
17       thought, opinion, or behavior.

18               Thank you, Chairman Hogen, and  
19       those of you with the Commission and staff and  
20       to our regional office, Mr. Harper.

21               I do request this statement be  
22       made a part of this record.

23               CHAIRMAN HOGEN: Thank you. It  
24       will be included.

25               MR. TIGER: I do have one question

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1       in some of the dialogue that's going on today.  
2       I admire you for being in one room for a  
3       number of tribes throughout the last two days  
4       and have to go through this.

5               But as I stood outside and a  
6       number of tribes were coming and speaking  
7       about the visit. And as you know,  
8       historically it was always, and I think in my  
9       comments it has been that sometimes are we  
10      going through a formality as, has this  
11      decision has been made? That seems to be the  
12      big question. I know in the last two days  
13      here and I'm sure in other parts of the

14 country that you go to, are we actually going  
15 through a formality and a decision has been  
16 made.

17 And implore upon you to let us  
18 know if that's the case. Because if we are  
19 going through a formality, if you will, it  
20 hasn't changed the historical speculative of  
21 what we as Indian people have been confronted  
22 with throughout our history of our tribes and  
23 our nation. Thank you.

24 CHAIRMAN HOGEN: Well, thank you,  
25 Speaker Tiger. If this were just a formality,

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1 we probably wouldn't have chosen to do it in  
2 Oklahoma in August and talk to 22 tribes in  
3 two days. It has been a long but fruitful  
4 discussion. You are the 20th tribe we have  
5 met with in two days. I probably got a little  
6 short here during my discussions. I apologize  
7 for that. I will try to do better.

8 No. We absolutely are listening  
9 carefully to everything that is said, and we  
10 are going to read carefully all of the  
11 comments that are submitted to us. And we've  
12 learned things that, you know, angles that we  
13 hadn't even thought about when we drafted  
14 these things that we need to address.

15                   So, I assure you this is useful  
16                   and it's not a formality. It's serious. Does  
17                   that mean we will just toss out everything  
18                   that we had on the drawing board? Not  
19                   necessarily. But we will weigh carefully the  
20                   comments and criticisms if we continue to  
21                   adopt any of those things we said initially.

22                   CHIEF ELLIS: If I may,  
23                   Mr. Chairman, I would like to defer to my  
24                   second speaker if he has any comments or  
25                   questions.

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1                   MR. BARNETT: I will hold off on  
2                   my comments at this time.

3                   CHIEF ELLIS: That's all I have.  
4                   Thank you.

5                   MR. SAPULPA: I just want to be on  
6                   the record that the only opinion that I think  
7                   the rules as I read them appear to be  
8                   arbitrary and capricious. I don't see how  
9                   they can be perceived any other way.

10                   CHIEF ELLIS: If I may defer to  
11                   one of my council member is Mr. Alexander, who  
12                   is a former --

13                   MR. ALEXANDER: I want to say for  
14                   the record I am glad to be here today. My  
15                   observations from reading all of this and  
16                   trying to prepare for this consultation led me

17 to conclude after all the studying and I was  
18 trying to compress it all and get ready is the  
19 fact that it seems to me like you are trying  
20 to frustrate Class II gaming by making it -- I  
21 fear it's going to be made impractical and  
22 unprofitable.

23 And that it just seems like the  
24 easiest thing to do for Indian tribes would be  
25 to give us a compact with Oklahoma, and

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1 thereby giving them a percentage and every bit  
2 of our tribal revenue with no exposure and no  
3 risk. Thank you.

4 MR. McCULLOUGH: Anyone else?

5 MS. MUSTARI: I don't want to  
6 upset everyone. I might say the wrong thing.  
7 I will make a comment at what point do we  
8 decide the state is not dealing with us in  
9 good faith? Because I think we have come to  
10 that point. And I think it is done.

11 CHAIRMAN HOGEN: Well, you hit on  
12 a key point, I think, that we need to keep in  
13 mind as we, perhaps, will affect the balance.  
14 The State of Oklahoma was a very difficult  
15 place for a long time in terms of compacting;  
16 and in the view of some, still is, as you have  
17 a compact available. But it's kind of a take

18       it or leave it compact.  It's for a limited  
19       period of time.

20                   And the Indian Gaming Regulatory  
21       Act is broken to the extent that congress, I  
22       think, did the right thing when they said you  
23       could take states to court for not bargaining  
24       in good faith.  And the Supreme Court decided  
25       in the Seminole case that that would violate

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1       the State's 11th amendment rights.  So that  
2       part is missing.

3                   We are seeing some progress in the  
4       area of secretarial procedures.  That is a  
5       process whereby secretary can promulgate a  
6       Class III compact, so to speak, in the absence  
7       of a negotiated agreement.  There are still  
8       some tests that have to be passed before that  
9       will be very widely available.  We saw the  
10      Northern Arapaho get a set of secretarial  
11      procedures here recently for their operation  
12      on the Wind River reservation in Wyoming.

13                   There are several other tribes  
14      that are at the table, the Seminole of Florida  
15      are in the Secretary's office as we speak in  
16      that connection.  We recently this afternoon  
17      met with the Kickapoo of Texas who likewise  
18      haven't been able to compact with their state  
19      and they are trying to get secretarial



20 procedures.

21 So, the day may come when this is  
22 a more viable vehicle. I think that will have  
23 two effects. One, it will be a place where  
24 tribes might go if they can't states to  
25 respond reasonable. Secondly, it will be a

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1 greater incentive for states to cut deals with  
2 tribes.

3 So I hope that we see progress in  
4 that area.

5 MR. McCULLOUGH: Chief, I don't  
6 believe there are any other questions. So I  
7 will turn it back to you.

8 CHIEF ELLIS: Of course, as tribal  
9 leader, bottom line is Creek money for the  
10 tribe. Whether we deal with Class II or Class  
11 III, I would like it to be our choice. I  
12 agree with everything Mr. Tiger said.  
13 Hopefully, we can work this out and do what's  
14 best for the nation. I appreciate you seeing  
15 us today, Mr. Chairman.

16 CHAIRMAN HOGEN: All right. Thank  
17 you.

18 MR. ALEXANDER: I just have one  
19 question, Mr. Chairman. Do we have a time  
20 line on when the final decision is going to be

21 rendered?

22 CHAIRMAN HOGEN: It won't be  
23 before the 30th of September. It will  
24 probably take us a while, because there is an  
25 awful lot of information to go over after that

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1 before we decide if we are going to do  
2 anything and then what we are going to do. So  
3 I would guess it will be early fall, at the  
4 earliest that we would do this.

5 Then, of course, after we publish  
6 the regulations, if we do, it would be a  
7 period before they go into effect, and then  
8 there would be another period of time set for  
9 tribes to come into compliance. And I expect  
10 before the ink is dry on any final regulations  
11 somebody is going to bring a lawsuit to  
12 question whether these are arbitrary and  
13 capricious or if they were deficient in some  
14 way. That's not a bad thing. That's a good  
15 thing.

16 We will get further guidance from  
17 courts with respect to whether we are headed  
18 in the right direction, and that's the way our  
19 laws are made.

20 MR. ALEXANDER: I guess with the  
21 lawsuit comment, I guess it's nice to know  
22 that you are preparing for that.

23                   CHAIRMAN HOGEN: Yeah, we will put  
24           the Justice Department on notice.

25                   MR. GILES: I just want to make  
                  NIGC CONSULTATION - MUSCOGEE-CREEK NATION

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1           one last comment. At this time all of our  
2           gaming revenue is from Class II gaming.

3                   CHAIRMAN HOGEN: Duly noted. I  
4           know you have a lot of machines and have made  
5           very good use of them.

6                   (Proceedings concluded.)

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1 C E R T I F I C A T E

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4 STATE OF OKLAHOMA )  
 ) SS:  
5 COUNTY OF OKLAHOMA )

6 I, Trena K. Bloye, Certified Shorthand  
7 Reporter for the State of Oklahoma, certify that the  
8 foregoing transcript of proceedings taken by me in  
9 stenotype and thereafter transcribed is a true and  
10 correct transcript of the proceedings; that they  
11 were taken on August 9, 2006, at the Cox Convention  
12 Center, Oklahoma City, State of Oklahoma; that I am  
13 not an attorney for nor a relative of any said  
14 parties, or otherwise interested in the event of  
15 said action.

16 IN WITNESS WHEREOF, I have hereunto set my  
17 hand and seal of office on this the 11th day of  
18 August, 2006.

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Trena K. Bloye  
Certified Shorthand Reporter  
for the State of Oklahoma

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